

**COOPERATIVE AGREEMENT AMONG
THE DEPARTMENT OF THE ARMY,
THE STATE OF OHIO, AND
THE RIVER VALLEY LOCAL SCHOOL DISTRICT
FOR THE RELOCATION OF MIDDLE SCHOOL,
HIGH SCHOOL, ADMINISTRATION OFFICES AND CAMPUS**

This Cooperative Agreement (hereinafter referred to as the "Agreement") reflects the joint commitment of the Department of the Army (hereinafter referred to as the "Army"), the STATE OF OHIO (hereinafter referred to as the "State") and the RIVER VALLEY LOCAL SCHOOL DISTRICT (hereinafter "RVLSD") to relocate the RVLSD middle school, high school, administration offices and campus currently located at 1239 Columbus-Sandusky Road North, Marion, Ohio 43302-8598 (hereinafter referred to as the "Property"). The Army, the State and RVLSD are sometimes herein collectively referred to as the "Parties".

BACKGROUND INFORMATION

A. RVLSD purchased in 1961 approximately 78 acres of land in Marion County, Ohio located at 1239 Columbus-Sandusky Road North, Marion, Ohio 43302-8598 (the "Property"). RVLSD currently owns and operates a middle school and high school and has its administrative offices on the Property.

B. Prior to 1961, the Army owned and operated the Marion Engineer Depot ("MED") on the Property. The Property is included in the Formerly Used Defense Sites (FUDS) Program and the Army is currently conducting environmental investigations on and about the Property. The State has a regulatory interest in the Army's environmental investigations on the Property.

C. RVLSD has filed a notice of tort claim pending with the Army Claims Service in the amount of \$25,024,000, claiming damage as a result of contamination from past activities of the Army on the Property.

D. The Parties have agreed that the cost of replacement of the RVLSD middle/high school campus, which is estimated by RVLSD to be \$24.8 Million at 1999 costs, shall be borne by the Parties as set forth herein.

E. The Army, having complied with the requirements of Section 312, Certain Environment Restoration Activities, of the National Defense Authorization Act for Fiscal year 2001 (P.L. 106-398), is authorized under 10 U.S.C.2701 and 2703 (as revised by that Public Law) to enter into a Memorandum of Understanding and this Agreement that allows for payment by the Army to RVLSD of a sum not to exceed \$15.0 Million to partially fund the permanent relocation of the RVLSD facilities from the Property.

AGREEMENT

The Parties hereby acknowledge the accuracy of the foregoing Background Information and, legislation having been enacted into law, the Army, the State and RVLSD agree as follows:

1. Definitions. The following terms in this Agreement shall be defined as follows:

1.1 "United States" shall mean the United States of America, its departments, agencies, and instrumentalities.

1.2 "State" shall mean the State of Ohio, its departments, agencies, and instrumentalities.

1.3 "RVLSD" shall mean the River Valley Local School District and its successors and assigns. All references to "RVLSD" shall also include RVLSD's successors, future owners, and assigns to the Property.

1.4 "Army" shall mean the United States Department of the Army.

1.5 "Agreement" shall be defined as the articles in this cooperative agreement and its attachments.

1.6 "Parties" shall mean the State, RVLSD and the Army.

1.7 "Property" shall mean the RVLSD middle school, high school and campus currently located at 1239 Columbus-Sandusky Road North, Marion, Ohio 43302-8598

2. Replacement/Relocation Cost. RVLSD has prepared an estimate of cost for replacement and relocation of its facilities on the Property based on reference materials from the State of Ohio's School Facilities Commission ("OSFC").

Based on 1999 cost figures, RVLSD's estimated cost of \$24.8 Million for replacement and permanent relocation of RVLSD's facilities on the Property includes real estate acquisition costs (including engineering and environmental studies), design fees, site preparation and permit costs, and construction costs to replace the current RVLSD facilities on the Property (collectively, the "Replacement/Relocation Cost"). The State has reviewed and does not disagree with that cost estimate but reserves the right to prepare a final cost as set forth in Ohio Revised Code Chapter 3318. Construction cost inflation from 1999 values to the actual time period for construction may cause costs to increase over the \$24.8 Million estimate. The Parties are confident that, after reviewing RVLSD's estimate of Replacement/Relocation cost, the Replacement/Relocation cost exclusive of betterments will exceed \$15 Million, but recognize that the project is subject to the audit provisions in Paragraph 12 below.

The Memorandum of Understanding among the Parties provides that the Army's payment shall not exceed \$15.0 Million toward the Replacement/Relocation Cost. The Army's contribution is intended to be limited to in-kind replacement of RVLSD's facilities. Betterments would include an increase in acreage of the replacement site over the acreage of the Property; increase in the square footage or the quality of finishes of the buildings, inclusion of facilities that are not on the Property (such as a natatorium) and increase of utility capacity. Provided, however, that betterments will not be deemed to include (and, therefore, costs eligible for payment by the Army would include) enhancements of buildings, utilities, and facilities from the improvements currently on the Property that are necessary to meet the then current building, safety, regulatory or educational codes, standards or regulations, and quality of finishes that are set forth in the July 2000 Design Manual adopted by the OSFC.

3. Cost Sharing. The Parties have agreed on a sharing of the Replacement/Relocation Cost. Subject to the availability of funds, the Army is to pay up to \$15.0 Million of the Replacement/Relocation Cost for replacement of facilities with no betterments, as described in Paragraph 2. The State, through the OSFC, shall pay to RVLSD approximately \$4.3 Million, plus adjustments for inflation as set forth in the Ohio School Facilities 2000 Design Manual. The Parties acknowledge that the precise amount of the State's payment is to be determined by OSFC's formula of 21% of the portion of facility costs that are eligible for State participation under the applicable program as set forth in the Design Manual, projected to be approximately \$4.3 Million using 1999 costs. Ohio and RVLSD agree that the OSFC has complied with the requirements of Ohio H.B. 282 Sec. 10.02. RVLSD will be responsible for all remaining Replacement/Relocation Cost and any other expenses not included within Replacement/Relocation Cost.

The Parties understand and acknowledge that the payments made by the Army shall be applied completely for the replacement of the RVSLD middle school, high school, administration offices and campus and shall not be considered restitution and recoverable by the State under Ohio H.B. 282 Sec. 10.02. Replacement/Relocation contracts will be awarded to the lowest responsive and responsible bidder.

4. Contribution to Elementary Schools Projects. The State, through the OSFC, shall also pay to RVLSD approximately \$3.5 Million, plus additional adjustments for inflation as set forth in the Design Manual, for two (2) elementary schools proposed to be constructed under Ohio's Classroom Facilities Assistance Program or Exceptional Needs Pilot Program. The exact amount of the State's contribution shall be set forth following an assessment of RVLSD's elementary schools as set forth in Ohio Revised Code Chapter 3318. Payments by the Army are not being used to fund these elementary school projects. The State's contribution to the elementary school projects is essential to allow RVLSD to pay its portion of the Replacement/Relocation Cost within the debt limit of the RVLSD.

5. Timing of Payments. The State's payment shall be made quarterly according to Ohio School Facilities Commission's guidelines and practices. RVLSD agrees to notify the Army in writing when it is prepared to execute or otherwise implement contracts to 1) purchase new real estate, 2) acquire design services, 3) prepare the site and 4) acquire construction services, provided that notice shall not be given as to any such phase prior to December 1, 2000. The written notice shall reference this agreement and obligation reference CA-01-RVLSD and consist of identification of total contract scope and amount, identification of betterments and associated amounts (if any) and balance of scope and associated amounts, anticipated date of award and shall be signed and certified by the Treasurer of the RVLSD. The original shall be furnished to the Grants Officer and a copy furnished to the Louisville District. Subject to the availability of funds within the FUDS program and the Army's compliance with the National Environmental Policy Act as to item 1 in this paragraph 5, the Army agrees to make payments to RVLSD within 30 days after this notice. Payment by the Army toward any particular contract is limited to 100% of the value of the contract minus betterments and the total of the four payments shall not exceed \$15 Million. The Army shall obligate \$5 million in the first quarter and \$2 million in the fourth quarter of FY01 and obligate the remaining \$8 million in the first quarter of FY02. Payments shall be made to RVLSD upon notice to the Army under this paragraph except payments shall not exceed amounts obligated. Depending on RVLSD's ability to execute or implement these respective contracts, payments may carryover into a third fiscal year.

6. Enabling Legislation.

A) It is the intent of the federal enabling legislation Section 312, Certain Environment Restoration Activities, of the National Defense Authorization Act for Fiscal year 2001 (Public Law 106-398) that the Army have the ability to make a cost effective determination for response actions and that determination has been made concluding that the most cost effective response action for this site allows for the payment of up to \$15M toward the Replacement Cost and a Memorandum of Understanding has been executed stating that the Army will contribute \$15.0M toward the Replacement Cost subject only to the Replacement Cost, exclusive of betterments, being at least \$15.0 million. The Army's contribution would be less than \$15.0 million if, and only if, the Replacement Cost, exclusive of betterments, is less than \$15.0 million.

B) The Ohio General Assembly has adopted legislation funding Ohio's obligations under this Agreement and enabling the provisions set forth herein; and, the State's share has been approved by the Ohio School Facilities Commission and the Ohio Controlling Board.

7. Environmental Monitoring. The Parties agree that environmental monitoring will be continued during the period that RVLSD continues to operate schools on the Property. The State will prepare and implement a plan for indoor air monitoring. The Army will prepare and implement a plan for ambient air and groundwater monitoring not inconsistent with CERCLA and the NCP. RVLSD shall have the opportunity to review and comment on both the plans prior to implementation and the environmental monitoring data collected. The State agrees to continue funding for Ohio Department of Health's investigation into health issues in Marion County, Ohio, so that the study can be completed and results published in a reasonable amount of time.

8. Remediation. RVLSD agrees to exercise its best efforts to permanently relocate all RVLSD operations on the Property, including the schools and all related facilities owned or operated by RVLSD on the Property by the fall of 2003, subject to circumstances beyond the control of RVLSD. The Army agrees to expeditiously perform all required remedial actions on the Property at its own expense, subject to the availability of funds. The Army agrees to use its best efforts to complete remediation to the State's expressed criteria and return exclusive possession of the Property to RVLSD by the fall of 2005.

The Parties agree that future use of the property will be limited to industrial/commercial use. Clean up criteria will be risk based consistent with the industrial/commercial future use restriction. Methodologies for developing risk based clean up criteria will be consistent with CERCLA. Once the Army submits to the State appropriate documentation that remediation is complete and the State determines that such remediation has taken place, the State will issue appropriate documentation that remediation of contamination is complete to its satisfaction and such documentation may be relied upon by RVLSD, its successors and assigns. Subject to the terms herein, RVLSD, as the Property owner, does not waive and expressly retains its rights to participate in the process for remediation of the Property consistent with the terms of CERCLA and applicable state law.

9. Sale of the Property. RVLSD agrees to sell or transfer the Property within a reasonable time after RVLSD relocates its operations on the Property to the new campus and the Army's remediation is complete, and RVLSD may sell or transfer all or portions of the Property before remediation is complete. RVLSD agrees to record reasonable deed restrictions on the Property acceptable to the Parties, which will include preclusion of a) excavations, b) use of groundwater, and/or c) other intrusive activities within an approximately ten (10) acre area of Operable Unit 1 as defined in the Draft Remedial Investigation for the property dated February 2000. The State shall have access to inspect the property to ensure compliance with the deed restrictions. RVLSD or its successors or assigns shall obtain any necessary or appropriate zoning approvals consistent with such deed restrictions and the future uses of the Property. The Property may be split into smaller parcels for sale or transfer by RVLSD and deed restrictions and zoning may differ for various parts of the Property, consistent with the foregoing.

10. Tort Claim. RVLSD agrees to refrain from filing a lawsuit based on its notice of tort claim dated August 31, 1999, currently pending before the Army Claims Service until the United States and the Army fail to comply with the terms of this Agreement or until termination of this Agreement. RVLSD reserves all rights to pursue this action in the event the Army does not make full payment, as provided in this Agreement. Once the Army has made full payment as required by the terms of this agreement and the Memorandum of Understanding referred to herein, RVLSD agrees to notify the Army Claims Service that it is withdrawing its notice of tort claim and agrees to sign a Covenant Not to Sue in relation to such claim. RVLSD and the United States/Army reserve all other rights against each other, including without limitation rights to defense of claims, reimbursement, indemnity, and contribution in the event claims are asserted by third parties against RVLSD, its successors or assigns, and/or any of its past, present and future board members, officers, superintendents, employees, agents, legal representatives and contractors. Upon signing of this Agreement, the Army agrees to defer taking final action on RVLSD's tort claim so long as RVLSD and the Army are proceeding with efforts to relocate the existing school facilities.

11. Access. RVLSD agrees to grant to the State, the Army, and their contractors access agreements necessary for the Army's environmental restoration actions on the Property, including investigations, remedial actions, long term monitoring and the State's oversight activities. In the event a portion or portions of the Property are sold, transferred or used prior to completion of remediation by the Army, RVLSD shall provide appropriate documented rights of access for the Army and the State to conduct their activities. No such sale, transfer or use of the Property shall materially affect the Army's ability to conduct or the nature of the remediation.

12. Record keeping. Not later than 60 days after the effective date of this Agreement:

- a. RVSLD shall develop procedures for keeping books, records, documents, and other evidence reflecting expenses incurred or to be incurred as part of the Replacement Cost.
- b. RVSLD shall maintain such records in accordance with these procedures and for a minimum of three years after completion of the accounting or for a longer time if required by Ohio's Records Retention Law or the Auditor of State, under which such books, records, documents and other evidence were required.
- c. RVSLD shall make available for inspection by the Army and the State, upon reasonable notice, such books, records, documents and other evidence throughout the entire period.
- d. Upon reasonable advance notice, the Army may, at its expense, conduct audits of the RVSLD books, records, documents, and other evidence concerning the Relocation Cost. Any such Army audits shall be conducted in accordance with Government Auditing Standards issued by the Comptroller General of the United States. Such audits shall be only for the purpose of determining that funds provided by the Army were used consistent with the applicable requirements of OMB A-133 to pay the Replacement Cost of \$15.0 million exclusive of betterments, as defined herein, and the only requirements of OMB Circular A-133 that shall apply are:

- Activities allowed or unallowed;
- Allowable costs/cost principles;
- Cash management;
- Equipment and real property management;
- Procurement and suspension and debarment;
- Reporting;
- Special tests and provisions.

Program income shall be eligible for use by RVLSD for Replacement Costs as defined in paragraph 2.

13. Other Costs. Except for design fees identified as replacement/relocation cost under Paragraph 2, all legal and consulting costs of the Army and RVLSD associated with the environmental investigations or relocation of the schools from the Property shall be borne by the party by which they were incurred and are excluded from the Replacement Cost. Provided that this Agreement is not intended to supercede, amend or affect RVLSD's right to receive, obtain, retain, or use any funds provided to RVLSD by or through any legislation, governmental program, public agency or private party.

- 14. Availability of Funds.** Payment by the Army and/or the State is subject to the availability of funds, provided that, if either the Army or the State does not pay to RVLSD the sums as provided for herein, RVLSD may terminate this Agreement, without prejudice to any claims that it may have.
- 15. No Obligation of Future Appropriations.** Nothing herein shall constitute, or be deemed to constitute, an obligation of future appropriations by the United States and/or the State.
- 16. Dispute Resolution.** Before RVLSD or the Army may bring suit in any court concerning a dispute relating to this Agreement, RVLSD and the Army must first seek in good faith to resolve the dispute through negotiation or other forms of non-binding alternative dispute resolution mutually acceptable to the Parties. RVLSD and the Army agree that they will mutually attempt to agree upon a third party neutral. In the event RVLSD and the Army are unable to agree upon a third party neutral for mediation of a dispute, the Ohio Commission on Dispute Resolution/Conflict Management will be requested to name a third party neutral. The fees and expenses of a third party neutral shall be borne equally by the Army and RVLSD.
- 17. Nonadmission.** Nothing in this Agreement shall be construed as an admission of liability on the part of the United States, the Army, the State, or RVLSD for harm or damage of any kind related to any contamination at, on, or under the former MED site, which includes the Property.
- 18. Compliance with Law.** In the exercise of their respective rights and obligations under this Agreement, the Parties agree to comply with all applicable federal, state, and local laws and regulations.
- 19. Authority.** Each signatory to this Agreement represents that he or she is fully authorized to enter into this Agreement and to legally bind such party.
- 20. Interpretation.** The determination of the terms of, and drafting of, this Agreement has been by mutual agreement of the Parties after negotiation, with consideration by and participation of counsel for the Army, the State and RVLSD. Any presumption that uncertainties in this Agreement are to be interpreted against the drafting party is hereby waived by all Parties.
- 21. Non-waiver.** Except as set forth in Paragraph 6, Enabling Legislation, the waiver by one party of any provision or breach of this Agreement shall not be deemed a waiver of any other provision or breach of this Agreement.
- 22. Counterparts.** This Agreement shall become effective upon its execution by all of the undersigned. This Agreement may be executed in counterparts, and executed counterparts shall have the same force and effect as if all Parties had signed the same instrument.

23. Best Efforts. The Parties shall use their best efforts to cause this Agreement to be implemented as promptly as possible and to take all actions contemplated by this Agreement to effectuate this Agreement on the stated terms and conditions.

24. Certifications. By signing the agreement or accepting funds under the agreement, the RVLSD provides the:

- a. Certification at Appendix C, 32 CFR Part 25 regarding Drug-Free Workplace Requirements.
- b. Certification at Appendix A, 32 CFR Part 25 regarding Debarment, Suspension, and Other Responsibility Matters--Primary Covered Transactions.
- c. Certification at Appendix A, 32 CFR Part 28 regarding Lobbying.

25. Notices. Any notice required or desired to be sent under this Agreement shall be made by either telecopy or e-mail and by first-class U.S. mail to the following persons on behalf of the respective Parties:

THE ARMY:

COL Robert E. Slockbower
Commander, Louisville District
U.S. Army Corps of Engineers
P.O. Box 59
Louisville, Kentucky 40201-0059
(502) 315-6102
(502) 315-6109 fax

and

Larry P. Cook
Grants Officer
U.S. Army Engineer District, Nashville
Attn: Contracting Division
P.O. Box 1070
Nashville, TN 37202-1070

THE STATE:

Christopher Jones, Director
Ohio EPA
P.O. Box 1049
122 South Front Street
Columbus, Ohio 43216-1049
(614) 644-2782
(614) 644-3184 fax

and

Joseph P. Koncelik, Legal Counsel
Ohio EPA
P.O. Box 1049
122 South Front Street
Columbus, Ohio 43216-1049
(614) 644-2793
(614) 644-3184 fax

RIVER VALLEY LOCAL SCHOOL DISTRICT:

Thomas G. Shade, Superintendent
1239 Columbus-Sandusky Road North
Marion, Ohio 43302-8598
(740) 387-4261
(740) 387-4267 fax

and

Daniel J. Gunsett
Baker & Hostetler LLP
65 East State Street
Suite 2100
Columbus, Ohio 43215-4260
(614) 462-2642
(614) 462-2616 fax

The Parties may amend the identity of their respective representatives who are to receive notices by sending appropriate notices to the representatives of the other Parties hereto.

IN WITNESS WHEREOF,

THE DEPARTMENT OF THE ARMY

BY: Larry P. Cook
Larry P. Cook, Grants Officer

DATE: 08 DEC 2000

THE RIVER VALLEY LOCAL SCHOOL DISTRICT

BY: Robert Haas
Robert Haas, President

BY: Thomas G. Shade
Thomas G. Shade, Superintendent

BY: Thomas A. Snyder
Thomas Snyder, Board Member

BY: Karen McCleary
Karen McCleary, Board Member

BY: Tom Tomlin
Tom Tomlin, Board Member

BY: Denise A. Smith
Denise Smith, Board Member

DATE: 12 DEC 2000

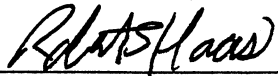
STATE OF OHIO

BY: Christopher Jones
Christopher Jones, Director


OHIO ENVIRONMENTAL PROTECTION AGENCY

DATE: 12-12-00

THE RIVER VALLEY LOCAL SCHOOL DISTRICT

BY: 
Robert Haas, President
River Valley Local School District Board of Education

DATE: 12 Dec. 2000_{KLS}

BY: 
Thomas G. Shade, Superintendent
River Valley Local School District Board of Education

DATE: 12 Dec. 2000_{KLS}